

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Petition for Recon- )  
sideration of Order WR 80-17 Regarding )  
Permit 13533 Issued Pursuant to )  
Application 13423 )  
STOCKTON - EAST WATER DISTRICT, )  
Permittee )

ORDER: WR 80-19  
SOURCE: Calaveras River  
COUNTY: San Joaquin

ORDER DENYING PETITION FOR RECONSIDERATION

BY BOARD MEMBER MITCHELL:

A hearing having been held pursuant to Section 1410 of the Water Code by the State Water Resources Control Board, hereafter Board, on September 11, 1979, for the purpose of allowing Stockton - East Water District, hereafter Permittee, to show cause why Permit 13533 should not be revoked; Permittee and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board having adopted Order WR 80-17 denying extension of time and ordering revocation of the permit; permittee having petitioned for reconsideration of Order WR 80-17; the petition and supporting data having been duly considered, the Board finds as follows:

Substance of Permit and Permittee's Project

1. The substance of the permit and details of the permittees project are set forth in Order WR 80-17. Repetition of those details is not necessary in this proceeding.

Record of Compliance With Permit Terms

2. Repetition of the history of diligence in proceeding with the project set forth in Order WR 80-17 is not necessary here since representatives of the permittee admitted at the hearing that it had not implemented the project. The justifi-

cation presented at the hearing for past failure to construct the project were obviously not sufficient to convince the Board to grant further extension.

Background

3. Permittee serves an area of approximately 114,500 acres and about 190,000 people. Approximately 74,900 acres are agricultural. Urban development covers 30,500 acres and miscellaneous roadways, river channels, and unused land comprise approximately 9,100 acres. Calaveras River and Mormon Slough flow westerly through the district from the foothills to tide water. Included in the district is the City of Stockton and the Town of Linden. Several large industrial complexes are within the district including the Port of Stockton, Stockton Metropolitan Airport, and the U. S. Naval Reservation on Rough and Ready Island.

4. Although groundwater is the largest single source of supply, extractions have exceeded recharge and permittee is confronted with an increasingly serious shortage of groundwater. The principal surface water supply is Calaveras River which is largely developed. Water is received from New Hogan Dam, marketed by the U. S. Water and Power Resources Service, shared between permittee and the upstream Calaveras County Water District (56.5 percent and 43.5 percent, respectively).

5. In order to meet its growing demands and develop alternate sources of water, permittee, filed Application 13423. Permittee stated at the hearing that it had not implemented its project under Permit 13533 because it considered Folsom-South Canal and New Melones Reservoir as preferred sources, and did not want to expend funds to develop the permitted project.

Petition for Reconsideration

6. The Petition for Reconsideration and the transmittal letter from legal counsel representing the permittee state the following:

a. Permittee does not dispute the findings of Order WR 80-17.

b. The Board of Directors has changed its position regarding the permitted project because of continuing uncertainty as to the eventual completion of the "preferred" federal projects.

c. As a result of the change in position the Board of Directors on October 7, 1980 authorized a study which is to include the following:

- 1) A feasibility study of the project
- 2) A specific plan of action
- 3) A timetable to implement the project
- 4) A study and proposal for mitigation measures for fisheries
- 5) A study of alternative sources of supply
- 6) A feasibility study of all water conservation measures which the District can employ to reduce its demand.

7. Permittee requests that the Board grant reconsideration of Order WR 80-17, but requests that the Board delay final action on the petition until no later than December 31, 1981. If the study determines that the project is infeasible, permittee will not object to revocation of Permit 13533.

#### Conclusions

8. It is concluded from the foregoing finding that the proposed study, since it does not yet exist, cannot now be considered "... relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing..." as set forth in Section 737.1 of the regulations. Nevertheless, the action taken by permittee to authorize the study is itself relevant evidence which, obviously, could not have been produced at the hearing, since the action was taken after the hearing and, in fact, after adoption of Order WR 80-17. Permittee itself, of course, controlled the timing of its action to authorize the proposed study and, therefore, the time at which this evidence was available. Accordingly, we find the real issue

to be whether permittee's action, considered in light of evidence on the question of permittee's diligence contained in the whole record, should cause us to change our conclusion that permittee has not been diligent in implementing its project under the subject permit.

9. We conclude that permittee's action in authorizing the proposed study, taken at this late date, does not tip the balance in favor of permittee on the diligence question, in light of the whole record. Most simply put, authorization and completion of the proposed study should have been accomplished much earlier in the 31-year period between the date of application and the present, to entitle permittee to preserve its priority. Finally, we do not intend by this order to discourage permittee from carrying out the study, which appears overdue. We note that the study, as outlined, contains public interest elements, such as fishery mitigation and water conservation measures. Our order will not prejudice permittee's right to file a new application, should the study be undertaken and a feasible project be disclosed.

10. It is further concluded that sufficient time has been granted for the permittee to have developed this project. If the study is under taken and the results show that the project is feasible a new application can be filed.

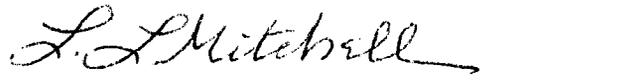
ORDER

NOW, THEREFORE, IT IS ORDERED, that the petition for reconsideration of Order WR 80-17 be denied and Permit 13533 be revoked.

Dated: November 6, 1980

  
Carla M. Bard, Chairwoman

  
William J. Miller, Vice-Chairman

  
L. L. Mitchell, Member

  
Jill B. Dunlap, Member

**ABSENT**  
F. K. Aljibury, Member

11/11/11



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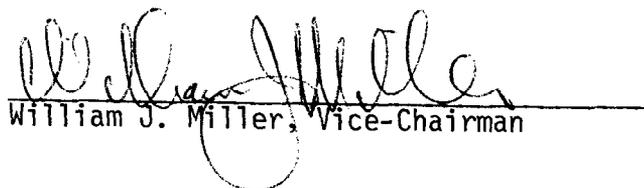
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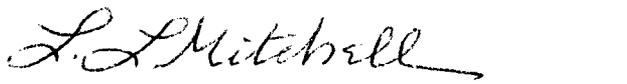
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